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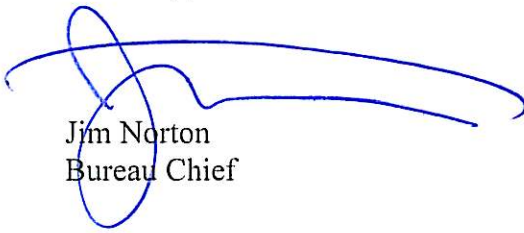
December 13, 2010

Dear PSTB Stakeholders:

Re: Policy for Extending AST Upgrade Deadline

During stakeholder meetings held this past fall 2010, many of you spoke about current economic conditions and difficulties in meeting the current above ground storage tank upgrade requirement in the Petroleum Storage Tank Regulations, found at 20.5.4.35 NMAC. The Petroleum Storage Tank Bureau also received comments about the installation requirements for new secondary containment structures and coating application requirements for existing secondary concrete containment and some changes to these regulations are under consideration. In response to these concerns, the Bureau issued the attached policy extending the AST upgrade deadline. Please review the attached policy, and if you have questions, please contact Jennifer Pruett at 505-476-4392 or Jennifer.Pruett@state.nm.us

Sincerely,



Jim Norton
Bureau Chief



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Memorandum

To: Prevention & Inspection Program Staff, PSTB

From: Jim Norton, Bureau Chief, PSTB

Subject: Bureau Policy for Extending AST Upgrade Deadlines

Date: December 3, 2010

As many of you already know, the AST upgrade deadlines were a big topic of discussion during the Bureau's fall stakeholder meetings. 20.5.4.35 NMAC currently provides that:

Not later than July 1, 2011, all owners and operators shall:

- A. upgrade existing AST systems to meet all performance standards for new AST systems in 20.5.4 NMAC, with the exception that existing AST systems need not submit project drawings; or
- B. close any AST system that does not meet performance standards in 20.5.4 NMAC; and
- C. close any UST being used as an AST.

At the fall stakeholder meetings, owners/operators told us that the most troublesome AST upgrade provision (and the most expensive) is the requirement for AST secondary containment for single-walled tanks and piping (20.5.4.29 NMAC). Proposed rule revisions will change this section from requiring a permeability standard generally met by application of a coating applied or inspected by a coating expert, to standards for construction of concrete to be certified by a Professional Engineer. As the rule revisions will likely not be effective until after the AST upgrade deadline above, owners and operators want to know which standard they must meet, and by which deadline. Additionally, owners and operators told us that because of current challenging economic conditions throughout the state, they are unable to borrow money to meet the AST upgrade deadline, and many of them are experiencing lower fuel sale volumes.

For these reasons, the Petroleum Storage Tank Bureau will request in rule revisions that the Environmental Improvement Board extend the AST deadline 2 years, from July 1, 2011 to July 1, 2013, for secondary containment for ASTs and their piping and dispensers. The Bureau will continue to enforce violations of other AST upgrade deadlines that have already passed (including but not limited to: deadlines for spill and overfill prevention, and leak detection). This

policy will not affect any UST upgrade deadlines or requirements. Additionally, this policy has no effect on federal AST requirements and deadlines, including any secondary containment requirements in the Spill Prevention, Containment and Countermeasures regulations.

Until the Board adopts changes to the regulations, the Bureau will exercise its enforcement discretion to apply current regulations for AST systems as follows:

- 1) The Bureau will not enforce the July 1, 2011 upgrade deadline for secondary containment for existing ASTs and their piping and dispensers;
- 2) The Bureau will not enforce or require coatings or coating reports for AST secondary containment systems found in 20.5.4.29.B NMAC;
- 3) The Bureau will not enforce the July 1, 2011 deadline to close any UST being used as an AST as this deadline will be changed to match the new AST upgrade deadline (until July 1, 2013);
- 4) The Bureau will diligently work to develop a new secondary containment standard and requirement for AST systems with the goal of proposing standards for secondary containment for ASTs by February 1, 2011;
- 5) AST systems that have been upgraded to meet the current upgrade deadline early, by installing a coating meeting current regulations prior to the date of this policy, will be "grandfathered in" and will not have to meet any new secondary containment performance standard adopted by the Board with the new AST upgrade deadline;
- 6) New ASTs systems installed must meet all performance standards, including secondary containment, per 20.5.4.27 NMAC.

The Bureau has committed to implementing this policy consistently across the state by all inspectors, effective immediately. Inspectors should bring any questions or issues regarding this policy to Kal's attention for discussion and resolution. Thank you for your cooperation.